

From: SSchmitz99@aol.com@inetgw
To: Microsoft ATR
Date: 11/16/01 9:27am
Subject: Microsoft Settlement

Gentlemen,

I am a software engineer and have been involved with this industry for over 15 years. Microsoft's bullying tactics have been well known within industry circles and I was glad to see that the federal government decided to take action 5 years ago.

I am disappointed in the final settlement, however. The reasons for this are as follows:

The appeals court was able to determine that Microsoft is a monopoly and had illegally used its monopoly powers. The law calls for (a) compensation for past wrongs (b) a forward looking remedy so as to protect companies from further predatory tactics.

The settlement does neither of these things. Microsoft has gained billions of dollars in excess profits as a result of its illegal acts over the past several years. It is important that Microsoft not be permitted to keep these gains for two reasons: (a) They further tilt the playing field in favor of the well funded monopoly. (b) They further embolden Microsoft and other would-be monopolists by creating a moral hazard.

The settlement is too narrowly defined and does not protect fledgling industries which are clearly important, but for which Microsoft wants to expand into. Specifically, it does not offer specific protection for handheld device makers (who are not given access to the OS source code. This is particularly relevant as e-mail from Bill Gates specifically directed managers from within the company to modify the Windows OS and Pocket PC code so as to make it more difficult for Palm to connect devices competitively. It also is too narrowly defined in that it does not account for quick changes in technology. It is difficult tell which new companies would benefit from access to Microsoft's source code. However, if specific provision is not written in for an industry it does not have access. This will result in denying access to important technology for fledgling startups who might benefit from open access. Seven years ago, the Internet and Browsers would have fit within this category and should this agreement been made at that time it is unlikely that it would have included browsers.

The settlement does not reasonably curb the illegal practices of Microsoft Office bundling and pricing of Office. Microsoft office is a monopoly and Microsoft can wield a big club when negotiating with companies when it wields this. A specific example is when Microsoft negotiated with Apple computer. They threatened to halt development of office for Mac.

I am also concerned regarding some of the general exceptions which have been placed into the agreement. These exceptions, while they may seem reasonable are large loopholes which have been specifically crafted by Microsoft to further its specific monopolist plans over the next 5 years. I would direct you towards the following fledgling industries: (a) Microsoft Passport - loophole encryption (b) Microsoft NET - loophole, denial of access to open source community (c) Microsoft Music and Video players - loophole encryption - remember digital rights is a basic part of these services, as it is on DVD players. (d) Microsoft Internet Servers - the unholy interconnection between servers and operating systems directs users away from competitive products. There remains limits on access to commercial vendors.

In short, your agreement is unreasonable and not in the public interest. I object to it. You have clearly been outwitted by Microsoft's lawyers I would remind you that 5 years ago Microsoft was placed in contempt of court for not following explicit court directions. Microsoft has a long track record of minimally following the law and court directions. It will clearly attempt to do whatever is within its power to weaken any provisions that restrict its monopoly power.

Instead, I would suggest that you work out an agreement in which the free forces of capitalism wrote to your benefit, instead of against you as this agreement does. Lastly, why does the agreement only last 5 years? The monopoly will last longer! If I could have a lifetime monopoly but only if I lived with restrictions for 5 years, that would be a gift.

Scott.